

C.) REMARKS

The Final Office Action mailed November 30, 2006 has been received and carefully considered. Upon entry of the present amendments, claims 2-20 will be pending. In the Office Action, claims 1, 5 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al. (U.S. Patent No. 6,657,718 B1) hereinafter "Petersen" in view of Robert J. Harvey (U.S. Patent No. 3,614,243) hereinafter "Robert"; claim 13 is rejected under U.S.C. 103(a) as being unpatentable over Petersen in view of the Examiner's Official Notice; claims 3, 4 and 14-20 are allowed over the prior art of record; claims 2 and 6 are objected to as being dependant upon a rejected base claim, but the Examiner has indicated that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejection under 35 U.S.C. 103

The Examiner rejected claims 1, 5 and 7-12 under 35 U.S.C. § 103(a) as being unpatentable over Petersen in view of Robert.

Specifically, the Examiner stated that

Claims 1, 5 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al. (6,657,718 B1) in view of Robert (3,614,243)

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen in view of Robert. The reference of Petersen teaches of a sample chamber for a test specimen of claim 1, comprising a main body (16), an optical element (11/30/33), the optical element having a surface for holding a test specimen, the optical element being operatively connected to the main body by a force applied to the surface for holding the test specimen, means (9/14/16) for applying a force for holding the test specimen of the optical element to operatively connect the optical element to the main body, the means for applying a force comprising at least one sealing element, the at least one sealing element being configured and disposed between the main body and the optical element (col. 4, line 32-65), the main body, the optical element and the at least one sealing element form a sample well upon the optical element being operatively connected to the main body by the means for applying a force (fig. 2)(col. 4, line 40-65). The reference of Petersen is silent regarding the orientation of the structure as to the optical element being disposed to form a bottommost portion of the sample chamber and the means for applying a force to a continuous portion of the surface for holding the test specimen of the optical element to operatively connect the optical element to the main body. The reference of Robert teaches of means (19/28) for applying a force to a continuous portion of the surface for holding the test specimen (fig. 4). It would have been obvious to one having ordinary skill in the art at the time of invention to provide means for applying a force to a continuous portion of the surface for holding the test specimen of the optical element to operatively connect the optical

element to the main body for the purpose of forming a vacuum/fluid-tight sealing/connecting. Additionally, it would have been obvious to one having ordinary skill in the art at the time of invention to provide an orientation (i.e. above/below) of the structure of the claim, would have been a matter of rearrangements. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to invert the structure to meet the terms of the claim because orientation does not matter within the scope of the claim. (see In re Kuhle, 526 F.3d 553, 188 USPQ 2d 1019, 98 USPQ 70 (CCPA 1989); see In re Japikse, 181 F.2d 1019, 98 USPQ 70 (CCPA 1969)).

As to claim 6, Petersen and Robert disclose everything claimed, as applied to claim 1 above, in addition Petersen discloses wherein the at least one optical element (11) is configured to permit visual inspection of a test specimen in the sample (col. 4, line 40-41).

As regard to claims 7, 8 and 9, Petersen and Robert disclose everything claimed, as applied to claim 1 above, in addition Petersen discloses at least one tube (23/24) being configured and disposed to add or withdraw samples or specimens from the sample well and wherein the main body comprising at least one aperture in communication with the sample well and the at least one tube is at least partially disposed in the at least one aperture and means (26/28) for attaching the at least one tube to the at least one aperture in the main body (figs. 1 and 2)(col. 5, line 45-54).

As to claim 10, Petersen and Robert disclose everything claimed, as applied to claim above, in addition Petersen discloses wherein the first aperture and the second aperture are disposed on opposite sides of the sample well to provide for substantially laminar flow of samples or specimens through the sample well (fig. 2)(col. 5, line 51-55).

As to claim 11, Petersen and Robert disclose everything claimed, as applied to claim above, in addition Petersen discloses wherein the main body comprises one of a plastic material and a metallic material (col. 3, line 24-26) and the at least one optical element comprising one of a glass material (11) and a plastic material (col. 4, line 33-38).

As to claim 12, Petersen and Robert disclose everything claimed, as applied to claim above, in addition Petersen discloses wherein the at least one optical element is coated with at least one of an electrical conductivity coating material, an antireflective coating material and a transmission enhancing coating material (col. 5, line 55-65).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al. (8,657,718 B1) as applied to claim 1, in view of the examiner Official Notice.

As to claim 13, the reference of Petersen is silent with regard to wherein the at least one sealing element is at least one adhesive ring. The examiner wishes to take Official Notice of the fact that the use of adhesive ring for sealing is known in the art. It would have been obvious to one having ordinary skill in the art at the time of invention to use at least one sealing element with at least one adhesive ring for the purpose of improving the sealing.

Applicants respectfully traverse the rejection of claims 1, 5 and 7-12 under 35 U.S.C. § 103(a).

Claim 1 has been cancelled herein thereby rendering the rejection thereagainst moot. In addition, claims 5 and 7-12 are believed to be distinguishable from Petersen and/or Robert as

depending from what is believed to be an allowable claim 2 as discussed in detail below. In conclusion, it is respectfully submitted that claims 5 and 7-12 are not anticipated nor rendered obvious by Petersen and/or Robert and are therefore allowable.

Further, Claim 13 is believed to be distinguishable from Petersen in view of the Examiner's Official Notice as depending from what is believed to be an allowable claim 2 as discussed in detail below. In conclusion, it is respectfully submitted that claim 13 is not anticipated nor rendered obvious by Petersen in view of the Examiner's Official Notice and is therefore allowable.

Allowable Subject Matter

The Examiner has allowed claims 3-4 and 14-20 over prior art of record. In addition, the Examiner objected to claims 2 and 6 as being dependent upon a rejected base claim, but indicated that the claims would be allowable, if rewritten in independent form including all of the limitations of the base claim and any intervening claims. While Applicant believes that independent claim 1 is not rendered obvious by Petersen in view of Robert, Applicant has amended claim 2 to incorporate the limitations from claim 1, in the interest in furthering prosecution of this Application, which amended claim 2 should be allowable. In addition claim 6 should be allowable as depending from what is believed to be an allowable claim 2.

CONCLUSION

In view of at least the above reasons, Applicants respectfully requests reconsideration of the Application and withdrawal of the outstanding objections and rejections. As a result of the amendments and remarks presented herein, Applicants respectfully submits that claims 2-20 are allowable. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicants' undersigned representative.

This Amendment/Response has been filed within three months of the mailing date of the Office Action and it is believed that no additional fees are due with the filing of this paper. In the event that Applicants are mistaken in their calculations, the Commissioner is authorized to deduct any fees determined by the Patent Office to be due from, or credit any overpayment to, the undersigned's Deposit Account No. 50-1059.

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Respectfully submitted,

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